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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ROY PETERSON,

Defendant and Appellant.

B193855

(Los Angeles County
Super. Ct. No. TA 084066)

APPEAL from a judgment of the Superior Court of Los Angeles County, Allen J. Webster, Jr., Judge. Affirmed.

Diane E. Berley, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Susan S. Pithey and Thomas C. Hsieh, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Appellant Roy Peterson pleaded nolo contendere to carrying a loaded firearm and admitted one prior felony conviction. He was sentenced to the low term of 32 months, which was doubled by the prior felony conviction. The court imposed restitution and parole revocation fines and ordered appellant to pay direct victim restitution; appellant was given presentence credits. Appellant's motion to suppress was denied. He appeals from the judgment, limiting his contention on appeal to the motion to suppress.¹

FACTS

The facts pertain to the motion to suppress.

At approximately 7:20 p.m. on March 30, 2006, uniformed Los Angeles Police Officers Jamison and Sharman were in a marked police car near 97th Street and Broadway; they were patrolling the area in light of a recent gang war. Jamison first saw appellant in an alley between 97th and 98th Streets; Jamison recognized appellant from an incident five weeks earlier, when officers chased appellant over several walls and recovered a firearm at the end of the chase.

On the night in question, appellant looked at the officers and appeared startled. Appellant was about 20 to 30 feet from the officers; he was illuminated by the police car's headlights. According to Jamison, it was not difficult to see. Appellant then turned and faced a wall and began speaking to a female who was on the other side of the wall. Jamison testified that he "exited the patrol vehicle in order to conduct a consensual encounter to talk about the recent increase in gang violence. [¶] Q. [by the district attorney] And what happened next? [¶] A. He turned towards me and said, 'I'm just talking together [*sic*] my lady.' [¶] Q. And then what happened? [¶] A. We continued to conversate [*sic*]. I observed a bulging in his right front pants pocket. I asked him if he

¹ We note that appellant's opening brief states erroneously that the appeal is authorized by Penal Code section 1237, subdivision (a) and rule 8.308(a) of the California Rules of Court. Neither of the cited provisions applies. This appeal is authorized by Penal Code section 1538.5, subdivision (m) and is exempted from the requirement of a certificate of probable cause by rule 8.304(b)(4)(A).

was armed and I asked him if he had a gun on him. He paused for a little bit and stated, ‘No’ and then turned towards the female that he was talking to.”

Jamison and appellant continued to talk. According to Jamison: “He [appellant] was facing the wall not talking directly at me. He would talk, he would answer my questions but talk to the female. I got the feeling he was trying to conceal what I believed was a gun. [¶] . . . [¶] . . . I believed he had a gun in his right front pocket upon observing the bulge, upon his expression when he saw us coming through the alley, the fact that he appeared to be trying to conceal the bulge against the wall, the fact that he was in possession of a firearm -- or I chased him two weeks or five weeks prior, coupled with the arrest of two 97 Gangster Crips in possession of firearms the day before, and the shootings increase [the] propensity form [*sic*] him to be armed. So I believe that there was a gun in his pocket. And fearing that he was going to escape, I decided to conduct a pat down search.”

Jamison testified that he had seen similar bulges in pants pockets before, which turned out to be firearms. Jamison concluded that appellant was armed with a handgun. He told appellant he was going to search him. Jamison immediately grabbed appellant’s right front pants pocket and felt the gun. Specifically, the object he grabbed “felt like a gun, it was hard like a gun, the shape was consistent with being a gun.” Jamison ordered appellant to put his hands on his head and detained him. Jamison’s partner took the gun from appellant, which was booked into evidence.

In ruling on the motion to suppress, the trial court found that the bulge in appellant’s pants pocket, and the configuration of the bulge when Jamison felt it, together with Jamison’s encounter with appellant five weeks before, gave the officer probable cause to believe that appellant was armed.

DISCUSSION

Appellant contends that “the initial detention of appellant was illegal under the Fourth Amendment, because Officer Jamison did not act reasonably. (*Terry v. Ohio* [(1968)] 391 U.S. [1,] 27.) Jamison had no justification for stopping appellant in the first place to make ‘reasonable inquiries.’ . . . [T]here were no specific and articulable facts to

suspect a crime was imminent or that appellant was involved. The detention was based on mere curiosity, rumor or hunch.”

In re Tony C. (1978) 21 Cal.3d 888, 893, sets forth the test to be applied in determining the validity of an investigative stop: “[T]he circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity. Not only must he subjectively entertain such a suspicion, but it must be objectively reasonable for him to do so: the facts must be such as would cause any reasonable police officer in a like position, drawing when appropriate on his training and experience [citation], to suspect the same criminal activity and the same involvement by the person in question. The corollary to this rule, of course, is that an investigative stop or detention predicated on mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith.” (Fn. omitted.)

The question in this case is when the “investigative stop” actually occurred. This question resolves itself into two components. There must be a “stop” and there must also be an “investigation.” As far as the first component is concerned, it cannot be said that when Jamison walked over to speak with appellant, who was standing by the wall, there was a “stop.” Jamison gave appellant no directions or orders, and appellant continued to do what he was doing before Jamison approached, which was to stand by the wall and talk to his girlfriend. At this point, there was also no “investigation,” as far as the record shows. Jamison’s stated reason for walking up to appellant was to talk about increasing gang violence in the area. There are no facts of record that contradict Jamison’s statement about the reason he approached appellant.

Realistically, the “stop,” as well as the “investigation,” occurred in this case when Jamison asked appellant whether he was armed. The question was prompted by the bulge in appellant’s right front pants pocket, by appellant’s effort to keep the bulge away from Jamison’s line of sight, and by Jamison’s knowledge that, five weeks before, appellant attempted to evade the police and was found carrying a gun. There was also the further

fact that, in Jamison’s experience, similar bulges in the past had turned out to be guns. This satisfied both prongs of the test set forth in *In re Tony C.* There was some “criminal activity” that was “afoot” and appellant was “engaged in that activity” (*People v. Souza* (1994) 9 Cal.4th 224, 230), i.e., it was probable that appellant was carrying a concealed weapon.

Appellant focuses solely on the initial stage of the encounter, which took place before Jamison asked appellant whether he was armed; as appellant puts it, the “detention was tainted before Officer Jamison spotted the purported gun-shaped bulge.” As we have shown, however, Jamison’s approaching appellant to talk to him was not an “investigative stop.” Appellant offers no facts, or even an argument, that suggest that Jamison’s approaching appellant and engaging him in conversation was an “investigative stop.” The police, like anyone, may walk up to a person and start a conversation; this is not a “detention” or an “investigative stop.”

DISPOSITION

The judgment is affirmed.

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FLIER, J.

We concur:

RUBIN, Acting P. J.

BOLAND, J.